

APPEAL NO. 172535  
FILED DECEMBER 20, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on July 13, 2017, with the record closing on September 12, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a right shoulder rotator cuff tear (also known as a right supraspinatus tendon tear), right biceps tendinitis, right shoulder SLAP tear, and right shoulder impingement; (2) the compensable injury of (date of injury), does not extend to right shoulder AC arthritis or right shoulder adhesive capsulitis; (3) the respondent (claimant) reached maximum medical improvement (MMI) on April 20, 2016; and (4) the claimant's impairment rating (IR) is six percent.

The appellant (carrier) appealed the ALJ's extent-of-injury determination in favor of the claimant, as well as the ALJ's MMI and IR determinations. The carrier contends that the ALJ erred in failing to admit a peer review report from (Dr. VH), after the CCH. The claimant responded, urging affirmance of the ALJ's determinations. The ALJ's determination that the compensable injury of (date of injury), does not extend to right shoulder AC arthritis or right shoulder adhesive capsulitis was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury in the form of at least a right shoulder strain on (date of injury). The claimant testified she was injured when a large dog she had on a leash ran away and jerked her right arm.

After the conclusion of the July 13, 2017, CCH, the ALJ reopened the record to order a re-examination with (Dr. C), the designated doctor appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division). Dr. C's report was forwarded to both parties on August 25, 2017. The ALJ notified the parties that the record would be held open until September 12, 2017, for the submission of written arguments or documentary evidence concerning Dr. C's report. In evidence is a Dispute Resolution Information System (DRIS) note from a Division employee dated September 12, 2017, noting that on that same date the Division received from the carrier's attorney written objections, a request to submit additional evidence, and closing arguments. The ALJ noted in the decision that "[p]age 3 of [the] [c]arrier's Closing

Argument references a CR-O, totaling 4 pages, which was noted to encompass a Peer Review performed by [Dr. VH] on September 7, 2017[;] however, CR-O was not part of the additional exhibits sent by [the] [c]arrier to [the Division] or the ALJ. . . .” The ALJ admitted Carrier’s additional Exhibits CR-K through CR-N.

In evidence is another DRIS note from a Division employee dated September 12, 2017, noting that the Division had received and forwarded to the ALJ the carrier’s written objections, request to submit additional evidence, and closing arguments. Also in evidence is a third DRIS note from a Division employee dated September 12, 2017, stating that the Division employee notified an individual by the name of Raquel with the carrier’s attorney’s office that the ALJ had received the carrier’s written objections, request to submit additional evidence, and closing arguments “and the entirety will be admitted into evidence.” Attached to the carrier’s appeal is an email sent on September 12, 2017, from (name) with the carrier’s attorney’s office to the carrier’s attorney stating that the “[ALJ] writes ‘let the parties know this was received and the entirety will be admitted into evidence.’”

The ALJ made clear in her decision that she was aware of Dr. VH’s September 7, 2017, peer review report the carrier sought to admit as evidence rebutting Dr. C’s post-CCH examination and report ordered by the ALJ. Given that the ALJ knew of the existence of Dr. VH’s report and that the Division notified the carrier that its supplemental information and evidence would be admitted in its entirety, we reverse the ALJ’s determinations and remand the issues to the ALJ for further consideration of the evidence and for further proceedings consistent with this decision. See Appeals Panel Decision (APD) 171739, decided September 19, 2017.

### **SUMMARY**

We reverse the ALJ’s determination that the compensable injury of (date of injury), extends to a right shoulder rotator cuff tear (also known as a right supraspinatus tendon tear), right biceps tendinitis, right shoulder SLAP tear, and right shoulder impingement, and we remand this issue to the ALJ for further action consistent with this decision.

We reverse the ALJ’s determination that the claimant reached MMI on April 20, 2016, and we remand this issue to the ALJ for further action consistent with this decision.

We reverse the ALJ’s determination that the claimant’s IR is six percent, and we remand this issue to the ALJ for further action consistent with this decision.

### **REMAND INSTRUCTIONS**

On remand the ALJ is to admit into evidence and consider Dr. VH's September 7, 2017, report and allow the parties an opportunity to respond. The ALJ is then to make a determination of whether the compensable injury of (date of injury), extends to a right shoulder rotator cuff tear (also known as a right supraspinatus tendon tear), right biceps tendinitis, right shoulder SLAP tear, and right shoulder impingement, whether the claimant has reached MMI and if so on what date, and if the claimant has reached MMI determine the claimant's IR.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **NATIONWIDE MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY  
211 EAST 7TH STREET, SUITE 620  
AUSTIN, TEXAS 78701-3218.**

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Carisa Space-Beam  
Appeals Judge

CONCUR:

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K. Eugene Kraft  
Appeals Judge

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Margaret L. Turner  
Appeals Judge